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9 (Once amended). The cosmetic composition of claim 7, wherein the particle size range is about 8 microns to about 15 microns.

10 (Once amended). The cosmetic composition of claim 7, wherein the particle size range is about 8 microns to about 10 microns.

REMARKS

Claims 1 through 20 remain pending. Independent claims 1, 3 through 5 and 7 through 10 have been amended above. A marked-up version of the changes made by the current amendment is entitled "Version With Markings to Show Changes Made" and may be found at pages 6 and 7.

Section 112 Rejections

Claims 1 through 20 have been rejected under 35 U.S.C. 112. The Office Action alleges that the use of the term "about" renders the claims vague and indefinite. Although the use of the term "about" has been well-accepted in the U.S. patent law, the claims have been amended to remove the term "about" with respect to particle size distribution in order to facilitate allowance.

Dependent claims 7 through 10 have been rejected as having insufficient antecedent basis. To move this application forward to allowance, claim 7 has been amended to independent claim form and to recite that the particle size range is about 1 micron to about 25 microns. In addition, claims 8 through 10 have been amended to depend from claim 7.

Support for the amendments may be found throughout the specification, and specifically at pages 5, 6 and the top of page 7. Accordingly, it is respectfully submitted that all Section 112 rejections have been obviated.

Section 103 Rejection

The Office Action also states that claims 1 through 20 have been rejected under 35 U.S.C. 103 as being obvious over U.S. Patent No. 6,258,345 to Rouquet et al. (hereinafter "Rouquet Patent") in view of U.S. Patent No. 5,658,579 to Lafleur et al. (hereinafter "Lafleur Patent").

The Manual of Patent Examining Procedure ("MPEP") sets forth that:

when applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

MPEP Original Eighth Edition, Section 2141.01, p. 2100-114 (August 2001) (emphasis added) citing Hodosh v. Block Drug Co., Inc., 786 F.2d. 1136, 1143 n.5, 229 USPQ 182, 187n.5 (Fed. Cir. 1986).

Independent claim 1 of the present invention is directed to a cosmetic composition that has a crosslinked elastomer, a plurality of substantially spherical particles having a particle size distribution of 24 microns, and a vehicle. Independent claims 3, 4, and 5 are also directed to cosmetic compositions that have a crosslinked elastomer, a vehicle, and a plurality of substantially spherical particles having a particle size distribution of 15 microns, 7 microns and 2 microns, respectively.

In contrast, the spherical organic particles of the primary reference, the Rouquet Patent, are disclosed to have a particle diameter of less than 10 microns (col. 1, lines 46-47) and, more preferably, less than less than 5 microns (col. 2, lines 30-31). The Rouquet Patent, however, is silent with respect to particle size distribution. Thus, absent hindsight reconstruction based upon the instant application, there is no motivation that would lead one of ordinary skill to combine

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the teachings of the Rouquet Patent with teachings with the LaFleur Patent. This is further evidenced by the fact that the PCT application corresponding to the LaFleur Patent published on February 13, 1997 (a copy of the cover page of the PCT publication WO 97/04737 is attached), which is over a year before the primary reference, the Rouquet Patent, was filed in the United States. If it were both obvious and desirable for one skilled in the art to combine the teaching of the LaFleur Patent with the teaching of the Rouquet Patent, certainly the Rouquet Patent inventors could have done so. Yet, instead, this did not occur.

Moreover, the present invention is further distinguished from the Rouquet Patent since particles having a diameter less than 10 microns cannot meet the particle size distribution recited in claims 1 (24 microns) and 3 (15 microns).

It is respectfully submitted that the claims of the present invention are patentable over the cited combination of references and are in condition for allowance. If there is any item that the Examiner would like to discuss prior to passing this application to allowance, please do not hesitate to contact the undersigned attorney.

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Respectfully submitted,



Rupa Sen, Esq.  
Reg. No. 42, 139  
Patent Counsel  
Avon Products, Inc.  
(Assignee of Record)  
Avon Place  
Suffern, NY 10501  
Phone (845)369-2483  
Fax (845) 369-2900

VERSION WITH MARKINGS TO SHOW CHANGES MADE

- 1 (Once amended). A cosmetic composition comprising:  
a crosslinked silicone elastomer;  
a plurality of substantially spherical particles having  
a particle size distribution of [about] 24 microns; and  
a vehicle.
3. (Twice amended) A cosmetic composition comprising:  
a crosslinked silicone elastomer;  
a plurality of substantially spherical particles having a particle size distribution of  
[about] 15 microns; and  
a vehicle.
4. (Twice amended) A cosmetic composition comprising:  
a crosslinked silicone elastomer;  
a plurality of substantially spherical particles having a particle size distribution of  
[about] 7 microns; and  
a vehicle.
5. (Twice amended) A cosmetic composition comprising:  
a crosslinked silicone elastomer;  
a plurality of substantially spherical particles having a particle size distribution of  
[about] 2 microns; and  
a vehicle.

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7 (Once amended). [The] A cosmetic composition [of claim 1,] comprising:  
a crosslinked silicone elastomer;  
a plurality of substantially spherical particles having a [wherein the] particle size range  
[is] from about 1 micron to about 25 microns, and  
a vehicle.

8 (Once amended). The cosmetic composition of claim [1] 7, wherein the particle size range is about 5 microns to about 20 microns.

9 (Once amended). The cosmetic composition of claim [1] 7, wherein the particle size range is about 8 microns to about 15 microns.

10 (Once amended). The cosmetic composition of claim [1] 7, wherein the particle size range is about 8 microns to about 10 microns.

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(71) Applicant: <b>THE PROCTER &amp; GAMBLE COMPANY [US/US]</b> ; One Procter & Gamble Plaza, Cincinnati, OH 45202 (US).			
(72) Inventors: <b>LaFLEUR, Patricia, Alison; 15 Briarwood Road, Shrewsbury Township, PA 17361 (US); VADAKETH, Leena; 18 Avignon Drive, Newark, DE 19702 (US); LEP-PLA, Jeffrey, Keith; 106 Upton Road, Baltimore, MD 21212 (US).</b>			
(74) Agents: <b>REED, T., David et al.; The Procter &amp; Gamble Company, 5299 Spring Grove Avenue, Cincinnati, OH 45217 (US).</b>			
(54) Title: <b>COSMETIC POWDER COMPOSITIONS HAVING IMPROVED SKIN COVERAGE</b>			
(57) Abstract <p>The present invention is for powder compositions containing high levels of talc, low levels of titanium dioxide and a sebum absorbing material wherein the composition has improved skin coverage, uniformity and duration of wear. The invention can be used in formulating numerous cosmetic powder compositions such as eye shadow, foundation, loose powder and the like.</p>			